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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,423	01/27/2004	Brian David Hofrichter	9150	1531
27752 7590 06/17/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER DOUYON, LORNA M				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
06/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: BRIAN DAVID HOFRICHTER
and MICHAEL FREDERICK NIEBAUER

Appeal No. 2008-005090
Application 10/765,423
Technology Center 1700

Mailed: June 16, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 7, 2008. Upon review of the application, it has been determined that a remand to Examiner, via the Office of the

Director of the Technology Center, is necessary to consider the following issues and to take necessary corrective action.

APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 1 and 3-20. The rejected claims that have not been appealed and/or argued for appeal are claims 17-19.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 7, Sept 2008).

CONCLUSION

Accordingly, it is

ORDERED that this application be returned to the Examiner to:

- 1) to enter a paper canceling claims 17-19; and
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/bar

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